

Amendment No. 1 to SB1331

Bailey
Signature of Sponsor

AMEND Senate Bill No. 1331

House Bill No. 1347*

by deleting all language after the enacting clause and substituting the following:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 27, Part 5, is amended by adding the following as a new section:

(a)

(1) A county shall not recover a medical payment paid to, or on behalf of, an insured under a plan authorized by this part unless the medical payment has been incorrectly paid, or, unless the insured recovers or is entitled to recover from a third party reimbursement for all or part of the costs of care or treatment for the injury or illness for which the medical payment is paid.

(2) The county is subrogated to all rights of recovery, for the cost of care or treatment for the injury or illness for which medical payment is provided, contractual or otherwise, of the insured against any person.

(3) The county shall not withdraw or reduce payments to a provider of the medical services in order to recover funds obtained by an insured from third parties for medical services rendered by the provider if these funds were obtained without the knowledge or direct assistance of the provider.

(4) If the county asserts its right to subrogation, then the county must notify the insured, in language understandable to the insured, of the insured's rights of recovery against third parties and that the insured should seek the advice of an attorney regarding those rights of recovery to which the insured may be entitled.

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(5) The county may recover from the insured any benefits incorrectly paid, while living, as a debt due to the county and, upon the insured's death, as a claim classified with taxes having preference under the laws of this state.

(b)

(1) Upon accepting a medical payment pursuant to a plan authorized by this part, an insured is deemed to have made an assignment to the county of the right of third party insurance benefits to which the insured may be entitled.

(2) Failure of the insured to reimburse the county for a medical payment received from a third party insurance benefit received as a result of the illness or injury from which the medical payment was paid may be grounds for removing the insured from future participation in the plan authorized by this part.

(3) The county, or an insurer contracting with the county, shall not remove an insured from participation in the plan authorized by this part as provided under subdivision (b)(2) until the county or insurer provides appropriate advance notice to the insured.

(4) The county or insurer shall not prevent a provider from receiving payment for services already rendered to an insured even if the insured is removed from participation in the plan authorized by this part as provided under subdivision (b)(2). However, this subdivision (b)(4) does not require an insurer to pay benefits to the county that has already been paid to the insured.

(c)

(1) For purposes of this subsection (c), "third party for medical services" or "third parties" includes, but is not limited to, a health and liability insurer, an administrator of an ERISA plan, an employee welfare benefit plan, a workers' compensation plan, CHAMPUS, medicare, and other parties that are by statute, contract, or agreement, legally responsible for payment of a claim for a healthcare item or service.

(2)

(A) The county is authorized to require certain information identifying persons covered by third parties for medical services. As a condition of doing business in this state or providing coverage to residents of this state, and subject to subdivision (c)(3), a third party for medical services shall, upon request from the county, electronically provide full eligibility files that contain information to determine the period an insured may be or may have been covered by the third party. The eligibility files must also include the nature of the coverage that is or was provided by the third party; the name, address, date of birth, social security number, group number, and identifying number of the plan; and the effective and termination dates for the coverage.

(B) No third party is liable to a policyholder for proper release of this information to the county.

(C) The third party shall provide the information described in subdivision (c)(2)(A) upon receipt of written request from the county, with the third party establishing confidentiality requirements for the information.

(3) Third parties shall respond to a written inquiry by the county regarding a claim for payment for any healthcare item or service that is submitted not later

than three (3) years after the date of the provision of the healthcare item or service.

(4) Third parties shall agree to respond to the request for payment, by providing payment on the claim, written request for additional information with which to process the claim, or written reason for denial of the claim, within ninety (90) working days after receipt of written proof of loss or claim for payment for healthcare services provided to an insured. Notwithstanding title 56, a failure to pay or deny a claim within one hundred forty (140) days after receipt of the claim constitutes a waiver of any objection to the claim and an obligation to pay the claim.

(d)

(1) Before the entry of the judgment or settlement in a personal injury case, the plaintiff's attorney shall notify and contact the county in writing by facsimile or certified mail return receipt requested in order to determine if the county has a subrogation interest. Notice by the plaintiff's attorney, at a minimum, must provide the following information: the full name of the plaintiff's client; the client's date of birth; the client's social security number, if known; the client's identification number; and the date the client's claim arose. Notice by the plaintiff's attorney must be consistent with this subdivision (d)(1) in order to be considered valid.

(2) Within sixty (60) days of receipt of the notice described in subdivision (d)(1), the county having a subrogation interest shall respond to the plaintiff's attorney in writing via facsimile or certified mail return receipt requested with either the amount of the subrogation interest or notice to the plaintiff's attorney that additional time is necessary in order to determine the amount of the subrogation interest, but in no event must a response containing the amount of

the subrogation interest exceed one hundred twenty (120) days. The plaintiff's attorney shall then inform the court regarding the results of the attorney's notice, if any. If no specific amount is claimed within the period specified in subdivision (d)(2), then the subrogation is extinguished and disbursements may be made without recourse upon the plaintiff or the plaintiff's attorney.

(3) If the plaintiff's attorney received a timely response from the county, but the amount of the subrogation interest remains in dispute, then the trial judge may hold a hearing in accordance with subsection (f). After trial and at the time of the entry of the judgment or settlement in a case in which the county has a subrogation interest under this section, it is the responsibility of the trial judge to calculate the amount of the subrogation interest and incorporate the court's findings concerning the subrogation interest in the final judgment or settlement.

(4) The trial judge shall base the gross amount of the subrogation interest upon the verdict at trial concerning medical expenses and evidence introduced after the trial about the total sum of moneys paid by the county for medical expenses for injuries arising from the incident that is the basis of the action. The trial judge shall reduce the gross amount of the subrogation interest by one (1) or more of the following factors, as applicable:

(A) To the extent that the plaintiff is partially at fault in the incident giving rise to the litigation, the subrogation interest is reduced by the percentage of fault assessed against the plaintiff;

(B) To the extent that the finder of fact allocated fault to a person who was immune from suit, the subrogation interest is reduced by the percentage of fault assessed against the immune person;

(C) To the extent that the finder of fact allocates fault to a governmental entity that has its liability limited under state law, and the

fault of the entity, when multiplied by the total dollar value of the damages found by the finder of fact, exceeds the amount of judgment that can be awarded against the entity, the subrogation interest is reduced proportionately by a percentage derived by dividing the uncollectable portion of the judgment against the governmental entity by the total damages awarded; or

(D) To the extent that the finder of fact allocated fault to a person that the plaintiff did not sue, the subrogation interest is reduced by the percentage of fault assessed against the nonparty.

(5) After the calculations described in subdivision (d)(4) are performed, the trial judge shall reduce the subrogation interest pro rata by the amount of reasonable attorneys' fees and litigation costs incurred by the plaintiff in obtaining the recovery.

(e) The amount determined after performance of the calculations in subsection (d) is the net subrogation interest. If the plaintiff or plaintiff's attorney collects the judgment, each has the obligation to promptly remit the net subrogation interest, and attorneys' fees and costs to any counsel employed by the county, as required by the final judgment. If the plaintiff and the plaintiff's attorney collect only a portion of the final judgment, each has the obligation to promptly remit a pro rata share of the net subrogation interest, and attorneys' fees and costs to any counsel employed by the county, as required by the final judgment. If the plaintiff or the plaintiff's attorney later collect additional moneys against the judgment, there is a continuing obligation on both of them to remit a pro rata share of the moneys collected as required by the final judgment.

(f) If the case between the plaintiff and the defendant is settled before trial and the parties and the county are unable to reach an agreement on the amount of the

subrogation interest, then the trial judge must hold a hearing to determine the gross and net subrogation interests, taking into account the criteria listed in subsection (d) and the likelihood of collecting any judgment against parties determined to be at fault. No expert foundation is required to prove any claimed damages. Any aggrieved party may appeal the court's decision.

(g) It is the intention of the general assembly that subsections (d) through (f) be used in lieu of application of the "made whole" doctrine for any recovery authorized under this section. Subsections (d) through (f) apply to cases that have been settled when no lawsuit has been filed.

SECTION 2. Tennessee Code Annotated, Title 8, Chapter 27, Part 6, is amended by adding the following as a new section:

(a)

(1) A municipal corporation or special school district shall not recover a medical payment paid to, or on behalf of, an insured under a plan authorized by this part unless the medical payment has been incorrectly paid, or, unless the insured recovers or is entitled to recover from a third party reimbursement for all or part of the costs of care or treatment for the injury or illness for which the medical payment is paid.

(2) The municipal corporation or special school district is subrogated to all rights of recovery, for the cost of care or treatment for the injury or illness for which medical payment is provided, contractual or otherwise, of the insured against any person.

(3) The municipal corporation or special school district shall not withdraw or reduce payments to a provider of the medical services in order to recover funds obtained by an insured from third parties for medical services rendered by

the provider if these funds were obtained without the knowledge or direct assistance of the provider.

(4) If the municipal corporation or special school district asserts its right to subrogation, then the municipal corporation or special school district must notify the insured, in language understandable to the insured, of the insured's rights of recovery against third parties and that the insured should seek the advice of an attorney regarding those rights of recovery to which the insured may be entitled.

(5) The municipal corporation or special school district may recover from the insured any benefits incorrectly paid, while living, as a debt due to the municipal corporation or special school district and, upon the insured's death, as a claim classified with taxes having preference under the laws of this state.

(b)

(1) Upon accepting a medical payment pursuant to a plan authorized by this part, an insured is deemed to have made an assignment to the municipal corporation or special school district of the right of third party insurance benefits to which the insured may be entitled.

(2) Failure of the insured to reimburse the municipal corporation or special school district for a medical payment received from a third party insurance benefit received as a result of the illness or injury from which the medical payment was paid may be grounds for removing the insured from future participation in the plan authorized by this part.

(3) The municipal corporation or special school district, or an insurer contracting with the municipal corporation or special school district, shall not remove an insured from participation in the plan authorized by this part as

provided under subdivision (b)(2) until the municipal corporation or special school district or insurer provides appropriate advance notice to the insured.

(4) The municipal corporation or special school district, or insurer, shall not prevent a provider from receiving payment for services already rendered to an insured even if the insured is removed from participation in the plan authorized by this part as provided under subdivision (b)(2). However, this subdivision (b)(4) does not require an insurer to pay benefits to the municipal corporation or special school district that has already been paid to the insured.

(c)

(1) For purposes of this subsection (c), "third party for medical services" or "third parties" includes, but is not limited to, a health and liability insurer, an administrator of an ERISA plan, an employee welfare benefit plan, a workers' compensation plan, CHAMPUS, medicare, and other parties that are by statute, contract, or agreement, legally responsible for payment of a claim for a healthcare item or service.

(2)

(A) The municipal corporation or special school district is authorized to require certain information identifying persons covered by third parties for medical services. As a condition of doing business in this state or providing coverage to residents of this state, and subject to subdivision (c)(3), a third party for medical services shall, upon request from the municipal corporation or special school district, electronically provide full eligibility files that contain information to determine the period an insured may be or may have been covered by the third party. The eligibility files must also include the nature of the coverage that is or was provided by the third party; the name, address, date of birth, social

security number, group number, and identifying number of the plan; and the effective and termination dates for the coverage.

(B) No third party is liable to a policyholder for proper release of this information to the municipal corporation or special school district.

(C) The third party shall provide the information described in subdivision (c)(2)(A) upon receipt of written request from the municipal corporation or special school district, with the third party establishing confidentiality requirements for the information.

(3) Third parties shall respond to a written inquiry by the municipal corporation or special school district regarding a claim for payment for any healthcare item or service that is submitted not later than three (3) years after the date of the provision of the healthcare item or service.

(4) Third parties shall agree to respond to the request for payment, by providing payment on the claim, written request for additional information with which to process the claim, or written reason for denial of the claim, within ninety (90) working days after receipt of written proof of loss or claim for payment for healthcare services provided to an insured. Notwithstanding title 56, a failure to pay or deny a claim within one hundred forty (140) days after receipt of the claim constitutes a waiver of any objection to the claim and an obligation to pay the claim.

(d)

(1) Before the entry of the judgment or settlement in a personal injury case, the plaintiff's attorney shall notify and contact the municipal corporation or special school district in writing by facsimile or certified mail return receipt requested in order to determine if the municipal corporation or special school district has a subrogation interest. Notice by the plaintiff's attorney, at a

minimum, must provide the following information: the full name of the plaintiff's client; the client's date of birth; the client's social security number, if known; the client's identification number; and the date the client's claim arose. Notice by the plaintiff's attorney must be consistent with this subdivision (d)(1) in order to be considered valid.

(2) Within sixty (60) days of receipt of the notice described in subdivision (d)(1), the municipal corporation or special school district having a subrogation interest shall respond to the plaintiff's attorney in writing via facsimile or certified mail return receipt requested with either the amount of the subrogation interest or notice to the plaintiff's attorney that additional time is necessary in order to determine the amount of the subrogation interest, but in no event must a response containing the amount of the subrogation interest exceed one hundred twenty (120) days. The plaintiff's attorney shall then inform the court regarding the results of the attorney's notice, if any. If no specific amount is claimed within the period specified in subdivision (d)(2), then the subrogation is extinguished and disbursements may be made without recourse upon the plaintiff or the plaintiff's attorney.

(3) If the plaintiff's attorney received a timely response from the municipal corporation or special school district, but the amount of the subrogation interest remains in dispute, then the trial judge may hold a hearing in accordance with subsection (f). After trial and at the time of the entry of the judgment or settlement in a case in which the municipal corporation or special school district has a subrogation interest under this section, it is the responsibility of the trial judge to calculate the amount of the subrogation interest and incorporate the court's findings concerning the subrogation interest in the final judgment or settlement.

(4) The trial judge shall base the gross amount of the subrogation interest upon the verdict at trial concerning medical expenses and evidence introduced after the trial about the total sum of moneys paid by the municipal corporation or special school district for medical expenses for injuries arising from the incident that is the basis of the action. The trial judge shall reduce the gross amount of the subrogation interest by one (1) or more of the following factors, as applicable:

(A) To the extent that the plaintiff is partially at fault in the incident giving rise to the litigation, the subrogation interest is reduced by the percentage of fault assessed against the plaintiff;

(B) To the extent that the finder of fact allocated fault to a person who was immune from suit, the subrogation interest is reduced by the percentage of fault assessed against the immune person;

(C) To the extent that the finder of fact allocates fault to a governmental entity that has its liability limited under state law and the fault of the entity, when multiplied by the total dollar value of the damages found by the finder of fact, exceeds the amount of judgment that can be awarded against the entity, the subrogation interest is reduced proportionately by a percentage derived by dividing the uncollectable portion of the judgment against the governmental entity by the total damages awarded; or

(D) To the extent that the finder of fact allocated fault to a person that the plaintiff did not sue, the subrogation interest is reduced by the percentage of fault assessed against the nonparty.

(5) After the calculations described in subdivision (d)(4) are performed, the trial judge shall reduce the subrogation interest pro rata by the amount of

reasonable attorneys' fees and litigation costs incurred by the plaintiff in obtaining the recovery.

(e) The amount determined after performance of the calculations in subsection (d) is the net subrogation interest. If the plaintiff or plaintiff's attorney collects the judgment, each has the obligation to promptly remit the net subrogation interest, and attorneys' fees and costs to any counsel employed by the municipal corporation or special school district, as required by the final judgment. If the plaintiff and the plaintiff's attorney collect only a portion of the final judgment, each has the obligation to promptly remit a pro rata share of the net subrogation interest, and attorneys' fees and costs to any counsel employed by the municipal corporation or special school district, as required by the final judgment. If the plaintiff or the plaintiff's attorney later collect additional moneys against the judgment, there is a continuing obligation on both of them to remit a pro rata share of the moneys collected as required by the final judgment.

(f) If the case between the plaintiff and the defendant is settled before trial and the parties and the municipal corporation or special school district are unable to reach an agreement on the amount of the subrogation interest, then the trial judge must hold a hearing to determine the gross and net subrogation interests, taking into account the criteria listed in subsection (d) and the likelihood of collecting any judgment against parties determined to be at fault. No expert foundation is required to prove any claimed damages. Any aggrieved party may appeal the court's decision.

(g) It is the intention of the general assembly that subsections (d) through (f) be used in lieu of application of the "made whole" doctrine for any recovery authorized under this section. Subsections (d) through (f) apply to cases that have been settled when no lawsuit has been filed.

SECTION 3. This act shall take effect July 1, 2019, the public welfare requiring it, and shall apply to plans entered into or renewed on or after that date.